FILED

JUN 18 1997

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AMERICAN SMALL BUSINESS COMPUTERS, INC., a corporation incorporated under the laws of Oklahoma,	)	
Plaintiff,	)	
vs.	)	86 C-1090-E
INTERNATIONAL MICROCOMPUTER SOFTWARE, INC., a corporation incorporated under the laws of California,	)	
Defendant.	)	

NOTICE OF DISMISSAL WITH PREJUDICE

Comes now the Plaintiff American Small Business Computers, Inc., and moves to dismiss the above styled action with prejudice against refiling the same pursuant to Rule 41 (1) of the Federal Rules of Civil Procedure.

Mark D. Lyons

MARK D. LYONS
LYONS & CLARK
Attorney for Plaintiff
Two Main Plaza
616 S. Main, Suite 201
Tulsa, Oklahoma 74119
(918) 599-8844

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

SAMSON RESOURCES COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 86-C-812-E
	)	
ANADARKO PETROLEUM CORPORATION, ROBERT J. ALLISON, JR., JAMES T. RODGERS, and M. E. ROSE,	)	
	)	
Defendants.	)	

Stipulation of **DISMISSAL WITH PREJUDICE**

Comes Now the plaintiff and dismisses with prejudice its Complaint filed in this action. Further Comes Now defendant and counterclaimant, Anadarko Petroleum Corporation, and dismisses with prejudice its counterclaim filed in the subject action.

GARY W. DAVIS

-Of the Firm-

CROWE & DUNLEVY
A Professional Corporation
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102
(405) 235-7700

ROBERT K. PEZOLD

-Of the Firm-

BRUNE, PEZOLD, RICHEY & LEWIS
700 Sinclair Building
Six East Fifth Street
Tulsa, OK 74103

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JENNETTE COLEMAN, Plaintiff, vs. AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY, Defendant.	)	No. 85-C-976-E

ORDER FOR DISMISSAL

The parties having stipulated to dismissal herein, it is ORDERED that this case should be and hereby is dismissed with prejudice to its refiling, each party to bear its own costs and fees herein.

JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMPREHENSIVE MEDICAL CARE AFFILIATES, INC. and ST. JOHN MEDICAL CENTER, INC.,	)	
Plaintiffs,	)	
vs.	)	Case No. 87-C-289 E
CO-ORDINATED BENEFIT PLANS, INC.,	)	
Defendant.	)	

FILED
JUN 17 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

It is hereby stipulated by and between all of the above-captioned parties:

1. That the parties hereto have settled the above-identified action to their full and mutual satisfaction; and

2. That the above-identified action is hereby dismissed with prejudice.

COMPREHENSIVE MEDICAL CARE AFFILIATES, INC.

By _____
David Pynn
President

Date 6/10/87

CO-ORDINATED BENEFIT PLANS, INC.

By _____
William T. Tuomey
President

Date _____

ST. JOHN MEDICAL CENTER, INC.

By _____
M. L. Blanchard
Senior Vice President

Date 6/10/87

LANEY, DOUGHERTY, HESSIN & BEAVERS

By _____
Alan T. McCollom
Suite 810, Williams Tower I
One West Third Street
Tulsa, Oklahoma 74103
(918) 592-6970

Attorneys for Defendant

Date June 10, 1987

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By _____
G. Michael Lewis
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiffs

Date June 10, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PEDRO A. NAVIA,

Plaintiff,

vs.

PHILLIP E. GARMY,

Defendant.

§§§§§§§§§§

Case No. 86 C 1067 E

ORDER OF DISMISSAL

The Court has been informed by the parties that they have entered into an agreement to dismiss with prejudice both the claims and counterclaims, with all costs to be borne by the party incurring same;

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that all claims of all parties in this action are dismissed with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs of court herein are to be taxed to the party incurring same.

SIGNED this 17th day of June, 1987.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Les Weisbrod

LES WEISBROD
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Dallas, Texas 75231
(214)373-3761

ATTORNEY FOR DEFENDANT

STEVEN R. HICKMAN OBA#4172
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Suite 100
P.O. Box 799
Tulsa, Oklahoma
(918)584-4724

ATTORNEY FOR PLAINTIFF

Entered

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 17 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

PEARL CHRISTINE SLAUGHTER,

Plaintiffs,

-vs-

MID CENTURY INSURANCE COMPANY,

Defendant.

No. 86-C-766-E

ORDER OF DISMISSAL

NOW on this 17th day of June, 1987, plaintiff's Application to Dismiss with Prejudice came on for hearing. The Court being fully advised in the premises finds that said Application should be sustained and the defendants, should be dismissed from the above entitled action with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's Application to Dismiss With Prejudice be sustained and the above captioned action be dismissed with prejudice as to defendants.

James O. Ellison

HONORABLE JAMES O. ELLISON, JUDGE
OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHNNY DOUGLAS JOHNSON,

Plaintiff,

v.

BOB ADAMS, DR. BUCKHOLD, Director of the Department of Mental Health, and the STATE OF OKLAHOMA,

Defendants.

86-C-1134-C

FILED

JUN 17 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed May 29, 1987, in which the Magistrate recommended that defendants' motion to dismiss be granted as to the Department of Mental Health, Dr. Buckholtz, Director of Eastern State Hospital, and Eastern State Hospital. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendation of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that defendants' motion to dismiss is granted as to the Department of Mental Health, Dr. Buckholtz, Director of Eastern State Hospital, and Eastern State Hospital.

Dated this 16th day of June, 1987.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 17 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. JOHNNY E. WALKER; DARLENE WALKER; GILCREASE HILLS HOMEOWNERS ASSOCIATION; COUNTY TREASURER, Osage County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 86-C-660-C

DEFICIENCY JUDGMENT

Now on this 16th day of June, 1987, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on May 26, 1987, and a copy of said Motion being mailed to Johnny E. Walker and Darlene Walker, 2302 West Oklahoma Place, Tulsa, Oklahoma 74127 and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendants, Johnny E. Walker and Darlene Walker, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on September 23, 1986, in favor of the Plaintiff United States of America, and against the Defendants, Johnny E. Walker and Darlene Walker, with interest and costs to date of sale is $70,122.52.

The Court further finds that the appraised value of the real property at the time of sale was $60,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered September 23, 1986, for the sum of $53,252.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 15th day of June, 1987.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Johnny E. Walker and Darlene Walker, as follows:

Principal Balance as of 03/02/87	$60,132.41
Interest	9,142.59
Late Charges	430.64
Appraisal	125.00
Management Broker Fees	180.00
Court Costs	111.88
TOTAL	$70,122.52
Less Credit of Appraised Value	- 60,000.00
DEFICIENCY	$10,122.52

plus interest on said deficiency judgment at the legal rate of 7 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, Johnny E. Walker and Darlene Walker, a deficiency judgment in the amount of $10,122.52, plus interest at the legal rate of 7.00 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH MICHAEL DEAN,

Plaintiff,

vs.

FRANK THURMAN, SHERIFF OF TULSA COUNTY, TULSA, OKLAHOMA, et al.,

Defendants.

No. 87-C-71-E

6-16-87

O R D E R

The Court has before it for its consideration the Plaintiff's Motion for Appointment of Counsel and, sua sponte, the question of whether this case must be dismissed for failure to state a claim. Plaintiff's complaint alleges that he is confined in the Tulsa County Jail, and while confined therein on December 19 through December 23, 1986 was mistakenly given thorazine which was prescribed for Kenneth Dean Orange, Jr.

In Daniels v. Williams, 106 S.Ct. 662 (1986), the United States Supreme Court held that the due process clause is not implicated by a state official's negligent act. In order to state a claim under 42 U.S.C. §1983 relating to medical care received, the Plaintiff must allege deliberate indifference to serious medical needs of the prisoner. Estelle v. Gambill, 97 S.Ct. 285 (1976). An accidental or inadvertent failure to provide adequate medical care will not suffice to state a claim. Gambill v. Estelle, 554 F.2d 653 (5th Cir. 1977). Therefore, because the Plaintiff's allegations of negligence do

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not state a claim for violation of due process, he cannot state a claim for violation of 42 U.S.C. §1983. Therefore appointment of counsel is not warranted in this case, and it should be dismissed for failure to state a claim upon which relief can be granted.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Appointment of Counsel is denied and

IT IS FURTHER ORDERED that the case shall be dismissed on the merits for failure to state a claim upon which relief can be granted.

DATED this 15th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS WILLIAM HERRINGTON, Plaintiff,	)	
vs.	)	No. 86-C-1077-E
DAVID GRANDELL, et al., Defendants.	)	

ORDER

The Court has before it for its consideration the question of whether it has removal jurisdiction over this action. It is clear from the pleadings that there is no diversity between the Plaintiff Thomas William Herrington and one of the Defendants, Oklahoma Telephone Directories ("OTD"), an Oklahoma corporation. Donnelley Information Publishing Corporation ("Donnelley") contended in its Removal Petition that OTD was fraudulently joined by the Plaintiff in order to prevent removal and that OTD is a corporation in dissolution so that its citizenship need not be considered in determining diversity. After reviewing the removal petition, the Court ordered the parties to brief (1) the legal status of OTD as of the date of the filing of Plaintiff's petition and (2) whether the Court must consider the citizenship of OTD in determining whether diversity exists.

In response to the Court's order Donnelley, Defendant David Grandell, and the Plaintiff all state that under Oklahoma corporation law as it existed prior to November 1, 1986, OTD is a legal entity which may be sued. Therefore, the remaining issue

is whether the Plaintiff has stated a claim against OTD upon which relief can be granted, or whether OTD was fraudulently joined to prevent removal.

The Plaintiff's petition alleges that in negotiating with Plaintiff concerning potential employment, the president of OTD assured Plaintiff that so long as he did a good job in his position he would have a job with OTD. Plaintiff also alleges that in early 1985 Donnelley purchased the publishing rights held by Defendant OTD, and thereafter discharged Plaintiff from his position.

Donnelley contends that following its purchase of the assets of OTD certain employees previously employed by OTD, including Plaintiff, became employees of Donnelley and that OTD had no authority to make any decisions with respect to such employees. On this basis, Donnelley contends that no claim can be stated against OTD for Donnelley's termination of the Plaintiff.

The Plaintiff responds that the nature of the sale of assets is a question of fact. If the purchase was a merger, then Defendant Donnelley would be responsible for the liabilities of OTD, but if the purchase was merely for the assets without any assumption of liabilities, that Donnelley would not be liable for the obligations of OTD, and that OTD would still be liable.

In Dodd v. Fawcett Publications, Inc., 320 F.2d 82 (10th Cir. 1964) the United States Court of Appeals for the Tenth Circuit discussed the inquiry which a court must make in order to determine whether or not there has been fraudulent joinder for the purpose of preventing removal. The Court stated as follows:

> In many cases, removability can be determined by the original pleadings and normally the statement of a cause of action against the resident defendant will suffice to prevent removal. But upon specific allegations of fraudulent joinder the Court may pierce the pleadings (citations omitted), consider the entire record, and determine the basis of joinder by any means available. (citation omitted) The joinder of a resident defendant against whom no cause of action is stated is patent sham, (citation omitted), and though a cause of action be stated, the joinder is similarly fraudulent if in fact no cause of action exists, (citation omitted). This does not mean that the federal court will pre-try, as a matter of course, doubtful issues of fact to determine removability; the issue must be capable of summary determination and be proven with complete certainty. (citation omitted)

The Affidavit of William A. Slater attached to the Defendant's Response and Motion to Dismiss states that Donnelley acquired the assets of OTD in April of 1985 under an assets purchase agreement, that the Plaintiff then became the employee of Donnelley, and that OTD had no further voice in decisions made concerning him. The Plaintiff has not responded to this Motion to Dismiss nor to the Affidavit of Mr. Slater.

Under the materials submitted to the Court, LTD could not be liable for termination of the Plaintiff. It was no longer the Plaintiff's employer at the date of termination. Furthermore the motion to dismiss was confessed by Plaintiff's failure to respond. Local Rule 14(a). Therefore, the Court concludes that Plaintiff's claim against LTD should be dismissed for failure to state a claim, and that the removal of this case was proper due to the fraudulent joinder of Defendant OTD.

IT IS THEREFORE ORDERED that Plaintiff's claim against Defendant OTD is dismissed with prejudice, and the Court will

continue to exercise jurisdiction over the remaining action.

DATED this 15th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Filed

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM DALBY and MARTHA DALBY, Plaintiffs, vs. HAUCK OIL, INC.; THE BOARD OF DIRECTORS, OFFICERS AND PRINCIPAL SHAREHOLDERS OF HAUCK OIL, INC., HARLOND HAUCK, as the personal representative of the Millard H. Hauck Estate, RUTH FERGES HAUCK, BESSIE L. HAUCK, PAUL F. HAUCK, RUTH F. HAUCK, HARLOND HAUCK and SUSAN HAUCK WEST, both individually and as Officers, Directors and principal Shareholders of Hauck Oil, Inc.; LARRY ARTHUR PATTERSON; and NATIONAL OIL & SUPPLY COMPANY, INC.; W. L. GEHRS, JR., individually and as an Officer, Director and Shareholder of National Oil & Supply Company, Inc., Defendants, SUN COMPANY, INC., Intervenor.	)	No. 85-C-563-E

ORDER OF DISMISSAL WITH PREJUDICE

Now, on this 11th day of June, 1987, came on for consideration the Stipulation for Dismissal with Prejudice submitted to the Court by Plaintiffs, all Defendants, and Intervenor in the above-styled and numbered cause pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Court finds that Plaintiffs, Defendants and Intervenor have stipulated that this action should be dismissed with prejudice, and

IT IS THEREFORE ORDERED that the above-styled and numbered cause, together with all actions and causes of action asserted therein against Defendants Hauck Oil, Inc.; The Board of Directors, Officers and Principal Shareholders of Hauck Oil Co, Inc., Harlond Hauck, as the personal representative of the Millard H. Hauck Estate, Ruth Ferges Hauck, Bessie L. Hauck, Paul F. Hauck, Ruth F. Hauck, Harlond Hauck and Susan Hauck West, both individually and as Officers, Directors and principal Shareholders of Hauck Oil, Inc.; Larry Arthur Patterson; and National Oil & Supply Company, Inc.; W. L. Gehrs, Jr., individually and as an Officer, Director and Shareholder of National Oil & Supply Company, Inc. by Plaintiffs and Intervenor should be, and the same is hereby, dismissed with prejudice to the refiling thereof.

IT IS SO ORDERED.

Honorable James O. Ellison
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MOTHER GOOSE CHILDREN'S STUDIO, INC.,	)	
Plaintiff,	)	
vs.	)	No. 86-C-498-E
BANK OF TULSA,	)	
Defendant.	)	

O R D E R

NOW on this 11TH day of June, 1987 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that this case comes before the Court on an appeal from the United States Bankruptcy Court for the Northern District of Oklahoma. In its appeal Plaintiff-Appellant Mother Goose Children's Studio, Inc. raised several procedural issues which deal with the rights of secured creditors in the assets of a bankruptcy estate. Defendant-Appellee Bank of Tulsa, in its brief, denied any wrongdoing in the matter and further raised the issue of mootness.

The facts in this case indicate that in 1980 Bank of Tulsa made a loan to Plaintiff Mother Goose Children's Studio which was guaranteed by Lynn Wells. Such loan was secured by a security agreement upon the equipment, fixtures and furniture of Plaintiff Mother Goose. On January 4, 1985 a petition in bankruptcy, styled 85-00008, was filed in the names of Wyatt Lynn Wells, Jr. and Beverly Ann Wells, d/b/a Mother Goose Children's Studio. A

separate petition in bankruptcy, styled 85-00009, was filed on the same date, under the name Mother Goose Children's Studio. Defendant Bank of Tulsa was scheduled as a secured creditor of Lynn and Beverly Wells d/b/a Mother Goose Children's Studio on studio equipment and furnishings in the amount of $13,000.00. Debtors Lynn and Beverly Wells, d/b/a Mother Goose Children's Studio, filed in case no. 85-00008 an intention to reaffirm the secured debt of Defendant Bank of Tulsa. A Reaffirmation Agreement dated February 22, 1985 was filed in case no. 85-00008 on March 25, 1985 reaffirming the debt to Bank of Tulsa in the amount of $13,068.93 and secured by studio equipment and furnishings. The Promissory Note attached to such Reaffirmation Agreement and incorporated therein by reference is dated March 5, 1985, and is set up in the name of Mother Goose Studios Inc. The Reaffirmation Agreement is signed by Wyatt Lynn Wells. The Promissory Note is designated as "Mother Goose Studios Inc. by W. Lynn Wells, President" and appears to be signed in same manner. A Report of Trustee was filed in case no. 85-00009 styled In re Wyatt Lynn Wells and Beverly Ann Wells on April 1, 1985. This report had attached to it a copy of the Statement of Intention to reaffirm with the date February 22 written immediately beside the word "reaffirm." Debtors Wyatt Lynn Wells and Beverly Ann Wells, d/b/a Mother Goose Children's Studio, were discharged on June 11, 1985 and the case closed on April 4, 1986. Case no. 85-00009 has never been closed.

On March 12, 1986, Defendant Bank of Tulsa sued Mother Goose Studios, Inc. and W. Lynn Wells in the District Court of Tulsa

County, seeking replevin of the property and a deficiency judgment. Debtor Mother Goose Children's Studio, Inc. filed a Motion to Dismiss in the state court action, which Motion was overruled by Judge Caldwell on April 3, 1986.

A Motion to Lift Stay was filed in case no. 85-00009 by Bank of Tulsa on April 10, 1986. Objections and responses were filed by the parties and a hearing held. An Order Lifting Stay was entered by Judge Wilson of the Bankruptcy Court on May 14, 1986. Following such lifting of the stay, Defendant Bank of Tulsa issued replevin, took possession of some of the property, and foreclosed the same. A notice of appeal, but no stay pending appeal, was filed on May 19, 1986.

As stated previously, Defendant Bank of Tulsa raised in its brief the issue of mootness of the present appeal. This Court ordered additional briefing by Plaintiff-Appellant Mother Goose Children's Studio, Inc. upon this subject. Upon review of the authorities in this area, this Court has determined that the basic principles of mootness and finality of judgments precludes the Court from claiming jurisdiction over this appeal in light of Plaintiff-Appellant Mother Goose's failure to obtain a stay pending appeal. The "power of this court is 'limited to the adjudication of actual cases and live controversies' and the court cannot 'give opinions about abstract propositions.'" Algeran, Inc. v. Advance Ross Corp., 759 F.2d 1421 (9th Cir. 1985), quoting Luckie v. E.P.A., 752 F.2d 454 (9th Cir. 1985).

Great changes in the status quo of the parties occurred after the Bankruptcy Court and the state court rendered their

orders regarding this matter. The property has been sold and the business closed. This Court is unable to devise a remedy which would restore the parties to their former positions. Such inability to grant appropriate relief necessitates that this appeal be dismissed as moot. See Sewanee Land, Coal & Cattle, Inc. v. Lamb, 735 F.2d 1294 (11th Cir. 1984). As was stated in American Grain Association v. Lee-Vac, Ltd., 630 F.2d 245 (5th Cir. 1980):

> Although as a general rule a party need not seek a stay of a lower court's judgment in order to protect its right to appeal, the "consequence of failing to obtain a stay is that the prvailing party may treat the judgment of the district court as final ..." 9 J. Moore, Federal Practice ¶208.03, at 8-9 (2d Ed. 1979). Thus, in the absence of a stay, action of a character which cannot be reversed by the court of appeals may be taken in reliance on the lower court's decree. As a result, the court of appeals may become powerless to grant the relief requested by the appellant. Under such circumstances the appeal will be dismissed as moot. Moore, id. at 8-10, 630 F.2d at 247.

See also Casady v. Bucher, 621 F.2d 984 (9th Cir. 1980). Thus, the property having been foreclosed and sold, and no stay pending appeal having been obtained, it is the determination of this Court that this appeal is moot and must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this appeal should be and is hereby dismissed as moot.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SERVICE DRILLING CO., et al., Plaintiffs,	)	
v.	)	CASE NO. 86-C-166-E
UNITED GAS PIPE LINE COMPANY, Defendant.	)	

ORDER

NOW on this 11th day of June, 1987, pursuant to the Stipulation of Dismissal With Prejudice filed herein by the Plaintiffs and Defendant, it is ORDERED, ADJUDGED AND DECREED that the Complaint filed in this case on the 28th day of February, 1986, is hereby dismissed with prejudice. All parties to bear their own costs and attorneys' fees.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

~~John L. Randolph, Jr.~~
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
W Bland Williamson

900 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

Attorneys for Plaintiffs

John L. Arrington, Jr.
Robert A. Huffman, Jr.
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Attorneys for Defendant

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MACHINE MAINTENANCE & EQUIPMENT, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 84-C-437-E
FRED ESCOTT d/b/a FRED ESCOTT DRILLING,	)	
Defendant.	)	

ORDER DISMISSING CASE WITH PREJUDICE

NOW on this 11th day of June, 1987, the joint application by Plaintiff and Defendant dismissing all claims against each other with prejudice comes before the Court, and for good cause shown the Court finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all claims of all parties are hereby dismissed with prejudice.

James O. Ellison, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RALPH HERBERT LINDLEY, Appellant, vs. DOBIE LANGENKAMP, Successor Trustee of Republic Financial Corporation, Appellee.	)	No. 86-C-1159-E Bankruptcy Case No. 84-01460 (Chapter 11) Adversary No. 85-309

O R D E R

This matter is before the Court for its consideration of the application of R. H. Lindley to file an interlocutory appeal from the Bankruptcy Court's order of December 30, 1986 denying his motion to strike the First Amended Complaint of the Trustee, and the Bankruptcy Court's order of December 31, 1986 striking Defendant's Application for Leave to Appeal and the Notice of Appeal filed in Bankruptcy Court.

28 U.S.C. §158(a) provides that the district court can grant leave for an interlocutory appeal of orders and decrees of bankruptcy judges. Leave for an interlocutory appeal is appropriate only when the Bankruptcy Court's decision involves a controlling question of law as to which there are substantial grounds for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Langenkamp v. Lindley, 86-C-929-C (N.D. Ok. 1987). Here it appears that the issue sought to be appealed is whether the Bankruptcy Court erred in allowing the Trustee to amend its complaint in an adversary action past the last date for

amendments under the Bankruptcy Court's scheduling orders to substitute Herbert Lindley d/b/a LBL Oil Company for LBL Oil Company, and to add as Defendants W. R. Laws, G. E. McElree, LBL 80 Company, Ltd. and LBL Oil Corporation. Only Mr. Lindley has sought to appeal from the order of the Bankruptcy Court allowing the First Amended Complaint to stand. In evaluating his application for leave to appeal, there has been no showing that the Bankruptcy Court's decision involves a controlling issue of law as to which there is substantial ground for difference of opinion. The allowance of amendments and scheduling of cases is in large part discretionary with the Court. Furthermore an appeal at this juncture would not materially advance the ultimate termination of the litigation because all Defendants have not appealed the amendment issue.

With regard to the order of the Bankruptcy Court entered December 31, 1986 striking Mr. Lindley's notice of appeal from a prior order of the Bankruptcy Court, this issue has been previously addressed in Langenkamp v. Lindley, 86-C-929-C (N.D. Ok. 1987) and is therefore moot.

For the reasons discussed herein, the application for leave to appeal of R. H. Lindley is hereby denied.

DATED this 11th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EMANUEL J. NIEVES and
MARY C. NIEVES,

Plaintiffs,

vs.

FITZGERALD, DeARMAN & ROBERTS, INC., an Oklahoma corporation; and RON C. SHAW, an individual,

Defendants.

NO. 86-C-1106-C

ORDER OF DISMISSAL

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an order of dismissal in this matter. In view of the agreement of dismissal between the parties, the parties stipulate there should be a finding that there was no unauthorized trading or fraud on the part of the Defendants.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice. Each party shall bear their own attorney fees and costs.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

TSH/eab

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation,

Plaintiff,

vs.

JOHN A. MCLEAN and EARL WAYNE MCCULLOUGH,

Defendants.

No. 86-C-658-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the plaintiff and defendants above named, by and through their attorneys of record, and hereby stipulate to a Dismissal with Prejudice of the above referenced action for the reason that all issues of law and fact heretofore existing before the plaintiff and defendants in this action have been settled and compromised and there remains to be determined no issue of fact or fact between the plaintiff and defendants.

The parties, therefore, move this Court to approve the Stipulation of Dismissal with Prejudice of this action upon the ground that all claims, disputes, and issues of law and fact heretofore existing between the plaintiff and defendants have been settled and compromised.

Respectfully submitted,

SECREST & HILL

By: _____

W. MICHAEL HILL, OBA #4213
1515 East 71st, Suite 200
Tulsa, Oklahoma 74136
Telephone: (918) 494-5905

Attorney for Plaintiff

_____

BOBBIE CALLAHAN
1602 South Main
Tulsa, Oklahoma 74119

Attorney for Defendant,
John A. McLean

_____

DAVID E. CHARNEY
202 South Cedar
Post Office Box 116
Owasso, Oklahoma 74055

Attorney for Defendant,
Earl Wayne McCullough

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EVELYN TYLER,)
)
Plaintiff,)
)
v.) 86-C-1047-C
)
THE F&M BANK & TRUST COMPANY,)
)
Defendant.)

FILED

JUN 17 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed May 29, 1987, in which the Magistrate recommended that defendant's motion for summary judgment (pleading #4) be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that defendant's motion for summary judgment is granted.

Dated this 16th day of June, 1987.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RUTH JOSEPHINE MORGAN and MERLE E. LOGAN,	)	
Plaintiffs,	)	
vs.	)	No. 87-C-11-E
WOOD OIL COMPANY,	)	
Defendant.	)	

ORDER

The Court has before it for its consideration several motions filed by Defendant Wood Oil Company, including Defendant's Motion to Dismiss the claim of Merle E. Logan for failure to exhaust her administrative remedies, Defendant's Motion to Sever and Defendant's Motion to Strike Plaintiffs' Claim for Punitive Damages.

Motion to Dismiss Claim of Merle E. Logan

Plaintiffs are two former employees of the Defendant who have brought suit pursuant to the Age Discrimination and Employment Act ("ADEA") claiming that they were discriminated against in their employment because of their age. The Defendant, Wood Oil Company, ("Wood Oil") has moved the Court to dismiss the claim of Plaintiff Merle E. Logan for failure to exhaust her administrative remedies as required by 29 U.S.C. §626(d). Wood Oil contends that Logan failed to file a charge with the Equal

Employment Opportunity Commission at least sixty (60) days prior to filing suit in federal district court. Defendant Logan admits that she did not file a charge with the EEOC, but contends that she is allowed to opt into the suit brought by Ruth Josephine Morgan and the charge of discrimination filed by Plaintiff Morgan on September 18, 1985 under the opt in provisions of 29 U.S.C. §216(b), and under authority of Mistretta v. Sandia Corporation, 639 F.2d 588 (10th Cir. 1980); Bean v. Crocker National Bank, 600 F.2d 754 (9th Cir. 1979); and Burgett v. Cudahy Co., 361 F.Supp. 617 (D. Kan. 1973).

In Mistretta v. Sandia Corporation, supra, the United States Court of Appeals for the Tenth Circuit considered whether employees of the Sandia Corporation who had not filed formal charges with the New Mexico Human Rights Commission or formal notice of intent to sue on the Secretary of Labor could join in the actions brought by two private plaintiffs who had met these filing requirements. In Mistretta the charges filed by the two individual plaintiffs included the language "individually and on behalf of all other similarly situated." The individual plaintiffs contended in the formal charges that Sandia's "arbitrary action constitutes age discrimination against workers over forty". The Tenth Circuit concluded that this notice was sufficient to give the New Mexico Human Rights Commission an opportunity to investigate and act on the claims raised by the persons who had not filed formal charges.

In Gray v. Phillips Petroleum Co., 638 F.Supp. 789 (D. Kan. 1986) Judge Saffels of the United States District Court for the

District of Kansas considered whether summary judgment should be entered against plaintiffs in an action under the ADEA who had not filed charges with the EEOC. Two of the plaintiffs had met the notice requirements and the remaining plaintiffs had then joined in the action. At issue in the case was whether the layoff and transfer policy of Phillips Petroleum Co. with regard to its refinery in Kansas City, Kansas was in violation of the ADEA. The Kansas court noted that although the complaints filed by Gray and Walsh did not specifically state that the claims were being filed on behalf of other persons similarly situated, the EEOC was given notice of the termination, layoff, and transfer policies of the defendant such that the complaints afforded the employer an adequate opportunity to be made aware of the ADEA requirements and to voluntarily comply therewith. Because the same issues were raised by those who had given notice as would have been raised by the remaining plaintiffs, the court held that notice would not be required, and denied the defendant's motion for summary judgment.

Thus, the issue presented to the Court here is whether the claim of Plaintiff Logan would give sufficient notice to the EEOC and the Defendant so that each would have an opportunity to investigate and to act on the issues raised by Plaintiff Logan's claim. Plaintiff Morgan's charge of discrimination is attached as Exhibit A to the Defendant's Reply Brief on its Motion to Dismiss. Plaintiff Morgan's charge of discrimination states that she was discriminated against because of her age in that the company refused to allow her to continue to work beyond the age

of 65, and terminated her for refusing to sign a retirement option. The claim of Plaintiff Logan, as shown by the allegations of the complaint, is that she was terminated three months prior to Plaintiff Morgan, that she was subjected to ridicule by management when she complained of treatment from other employees, and she was labeled by management as a troublemaker and complainer. The affidavit of Joe W. Smith, president and managing officer of the Defendant, attached to the Defendant's Brief in Support of Motion to Sever states that Plaintiff Logan worked in the revenue department and Plaintiff Morgan worked in the land department, and the job duties, departments and supervisors of the Plaintiffs were completely different. Unlike the claims before the court in Mistretta and Gray v. Phillips Petroleum Co., nothing about Plaintiff Logan's charge of discrimination would put the EEOC or the employer on notice concerning a potential claim from Plaintiff Morgan, who was terminated at a different time and under different circumstances. Therefore the Court concludes that this case is distinguishable from Mistretta and Gray and that the Defendant's Motion to Dismiss the claim of Merle E. Logan must be granted.

Motion to Sever

The Court having previously granted the Defendant's Motion to Dismiss against Plaintiff Logan, the Motion to Sever is moot.

Motion to Strike Punitive Damages

Plaintiff has moved the Court to strike the Plaintiffs' claim for punitive damages on the basis that they are not an available remedy under the ADEA, 29 U.S.C. §621 et seq. The Plaintiffs have responded that punitive damages are available under Transworld Airlines v. Thurston, 105 S.Ct. 613 (1985).

29 U.S.C. 626(b) provides that liquidated damages shall be payable only in cases of willful violations of this chapter. In Transworld Airlines, supra, the United States Supreme Court stated that the legislative history of the ADEA indicates that Congress intended for liquidated damages to be punitive in nature. Therefore, although not denominated "punitive damages", damages for willful violation are available, in addition to the actual damages sustained by the Plaintiffs, and Defendant's Motion to Strike should be denied.

Summary

The Defendant's Motion to Dismiss as to Merle E. Logan is granted, Defendant's Motion to Sever is denied on the basis that it is moot, and Defendant's Motion to Strike Punitive Damages is denied.

DATED this 15th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES FIDELITY AND GUARANTY COMPANY, Plaintiff, vs. ROSALIE A. HOLT and DAVID K. DUBOIS, individually, and as co-partners, d/b/a DELAWARE COUNTY INSURANCE AGENCY, Defendants.	)	No. 87-C-367-B

FILED
JUN 15 1987
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

STIPULATION

Be it stipulated by and between the parties as follows:

1. Rosalie A. Holt and David K. Dubois as co-partners d/b/a Delaware County Insurance Agency, defendants herein, herewith deliver to United States Fidelity and Guaranty Company, plaintiff herein, all records including but not limited to daileys and expirations covering policies itemized in Exhibit "A" attached hereto.

2. Defendants covenant and agree that they will not hereafter solicit and/or contact the policyholders named in Exhibit to replace, change or renew the insurance coverage provided by said policies to the named policyholders.

3. It is stipulated that the plaintiff is authorized to sell the book of business, consisting of said policies, to a third party. The proceeds from such sale shall be applied to the indebtedness of the defendants to the plaintiff. The covenant

not to compete in regard to said policies as herein proved shall inure to the benefit of the purchaser and shall be binding upon the defendants, their successors, heirs and assigns.

4. Be it stipulated that the plaintiff's request for an order of delivery and for a writ of replevin and the defendants' objections thereto are both withdrawn.

5. Be it further stipulated that the sole issue remaining between the parties is the balance of the amount of money due from the defendants to the plaintiff.

Dated this 10 day of June, 1987.

UNITED STATES FIDELITY & GUARANTY

By Jeff Burton
Plaintiff

Rosalie A. Holt
Rosalie A. Holt

David K. Dubois
David K. Dubois

Defendants

EXHIBIT "A"

Barney Barnes - Stemco
Workers Compensation
General Liability
Business automobile

Melba Smith
Personal automobile
Dwelling Fire
Business Owner's policy

Wiley Sparkman
Personal automobile

Clark Brewster
Personal automobile

Delaware County Friendship Homes, Inc.
Bond

James R. Newman
Homeowner

Helen Dooley
Dwelling Fire

R. E. Barnhart
Workers Compensation
General Liability

Peggy Pendergraft
Bond

Treva J. Martin
Homeowner

Charles Miller, d/b/a Miller Construction
General Liability
Workers Compensation

Fred Smith
Personal automobile

Loretta Robertson
Homeowner

Andy & O. Soldier
Dwelling Fire

Delaware County Bank
SMP
Business automobile

Vera M. Shackelford
Personal automobile

David K. DuBois
Personal automobile

Ronnie L. Vaughn
Bond

Kansas Public Schools
Commercial Fire

Jeff Burton
Rosalie A Holt

Lake Area Electrical
SMP
Business automobile

May Chubbee
Homeowner

Frank Arneecher
Personal automobile

Mildred Allen
Personal automobile

Meda Lively
Personal automobile

Mary I. Payne
Homeowner

Delmo L. Crouch
Homeowner

Everett Hodges
Homeowner

Clyde W. Wilson
Personal automobile

Jerry Crossley
Homeowner

C. R. Jordan
Homeowner

R. L. Williams
Homeowner

Mary Carroll
Bond

Burger Shack, R. E. Barnhart
Fire

Richard Shaw
Personal automobile

Bobby J. Smith
Personal automobile

Carl Ragsdale, d/b/a
Hanging Rock Camp
Business automobile
Workers Compensation
General Liability

Steven Wimberley
Bond

Donald Olive, d/b/a
Sitten Easy Mobile
General Liability

Jeff Burton
Rosalie A Holt

Leroy A. Hendren
Homeowner

Elmer M. Allen
Commercial Fire

Delaware County Farm Bureau
Bond

Mel Formby
SMP

Exie Monroe
Homeowner

Mont Phillips
Homeowner

Lon Burcham
Automobile

Bethel Goins
Fire

Colcord Public Works
Fire

Lora Fox
Homeowner

Marion E. Brown
Homeowner

Roselle Pendergraft
Personal automobile

Raymond Barnhart
Homeowner

Cecil Kidder
Personal automobile

Mariee Wallace
Homeowner

Miller's Construction
Audit

Patricia Black
Dwelling Fire

Merle Tinney, d/b/a
J. C. Penney Catalog Store
SMP

Charles Brown
Homeowner

Jeff Burton
Rosalie A Holt

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INTERNATIONAL TOURS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-527-E
	)	
TOM PAUL, et al.,	)	
	)	
Defendants.	)	

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 11th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 11 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

E.L. POWELL & SONS,

Plaintiff,

vs.

AMOCO PRODUCTION COMPANY and BECON CONSTRUCTION COMPANY, INC.,

Defendants.

Case No. 86-C-972-C

STIPULATION OF
DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, E.L. Powell & Sons, and hereby dismisses the above-styled cause with prejudice.

Dated this 9th day of June, 1987.

DAVID H. SANDERS, Attorney for Plaintiff

E.L. Powell & Sons

by _____

PLAINTIFF President

Secretary E.L. Powell & Sons

PLR2/006
nw

PHIL ROUNDS, Counsel for Amoco and Becon

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
LIBERTY TOWERS CONDOMINIUMS, INC.,	)	No. 86-C-1115-C
	)	
	)	
Debtor-in-Possession.	)	

O R D E R

Now before the Court for its consideration is the appeal of the debtor-in-possession from the order denying accountant fees of the United States Bankruptcy Court for the Northern District of Oklahoma entered on December 5, 1986 and filed on December 9, 1986.

On September 10, 1986, the debtor-in-possession filed its application for the payment of accountant fees. The application sought $5,485 for services rendered by Michael Barnes, Certified Public Accountant. No party filed an objection to the application. On October 30, 1986, a hearing was held before the bankruptcy court regarding the application. The bankruptcy court issued its order on December 5, 1986, denying the application in its entirety. The bankruptcy court cited three reasons for this decision: (1) the debtor did not obtain prior court approval of the accountant's employment and the application did not request nunc pro tunc approval; (2) a detailed statement of services detailing benefit to the estate was not provided with the

application; (3) the hours expended appear excessive for the work performed.

On appeal, the debtor-in-possession argues that the Barnes employment falls within an exception to the requirement in 11 U.S.C. §327(a) of prior court approval. The debtor cites 11 U.S.C. §327(b), which provides that when there is authorization to operate the business, regularly salaried professional persons may be retained or replaced as necessary in the operation of the business. The debtor also correctly notes that, even absent prior authorization, some courts have permitted an application for an order of authorization nunc pro tunc. There is a split of authority on this issue. See generally In re Mason, 66 B.R. 297, 302 (Bankr. D.N.J. 1986) and cases cited therein. Apparently no Oklahoma court has yet spoken on the point. The court below noted that no nunc pro tunc approval had been sought, but did not say if such an application would have been denied even if presented. In response, the appellee argues that no evidence was presented that the accountant was a regularly salaried employee of the debtor-in-possession, which evidence is necessary for an applicant to come within the 11 U.S.C. §327(b) exception.

As to this point, and as to the hearing in general, the appellant argues that the bankruptcy court led appellant to believe that the application for fees was deemed confessed, and that the bankruptcy court abused its discretion by denying the award in its entirety after hearing no evidence. At the hearing on October 30, 1986, the following exchange took place:

Mr. Pinkerton:
[Debtor's Counsel]

> I know that the Order says the Application for Attorney Fees is set for hearing. I assume that the Application for Accounting Fees, having drawn no objection, is the equivalent of approved ...

The Court:

> As to the accounting fees, the Court will so note there was no objection, and I will render an Order in accordance with the mandates of 330, I guess on the accountant.

In reviewing this exchange, this Court finds that while counsel assumed that the application was "the equivalent of approved," the court merely noted that no objection had been filed. It is established that the bankruptcy court has a duty to examine the reasonableness of all fees requested, even if there is no objection. In re Esar Ventures, 62 B.R. 204 (Bankr. D.Haw. 1986). The requirement of obtaining prior court approval under 11 U.S.C. §327 is likewise information of which a bankruptcy practitioner is or should be aware.

While the statement made by the bankruptcy court at the hearing was not a model of clarity, it is not incumbent upon a court to inform counsel how to proceed in presenting an application. The situation would be different if the appellant had requested an opportunity to present evidence, and the bankruptcy court had denied the request. The court did not refuse to hear evidence, because no attempt to present evidence was made. Under the circumstances, this Court cannot say that the bankruptcy court abused its discretion.

Accordingly, it is the Order of the Court that the bankruptcy court's order of December 5, 1986 denying accountant fees is hereby affirmed in all respects.

IT IS SO ORDERED this 10th day of June, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
LIBERTY TOWERS CONDOMINIUMS, INC.,	)	No. 86-C-1114-C
	)	
Debtor-in-Possession.	)	

O R D E R

Now before the Court for its consideration is the appeal of the debtor-in-possession from the order determining attorney fees of the United States Bankruptcy Court for the Northern District of Oklahoma, entered on December 5, 1986 and filed on December 9, 1986.

On September 10, 1986 the debtor-in-possession in this Chapter 11 proceeding filed its application for allowance of attorney fees in the amount of $18,800.00 as professional compensation for its attorney. The bankruptcy court held a hearing on the application on October 30, 1986, and entered its order on December 5, 1986, awarding $5,000.00 as compensation. It is from this order that the debtor-in-possession appeals.

The standard of review this Court must employ is quite high. It has been formulated as follows:

> The bankruptcy court has broad discretion in determining compensation for services performed in a bankruptcy proceeding and ... its exercise of discretion will not be disturbed unless it has been abused. The bankruptcy

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> court is more familiar with the actual services performed and "has a far better means of knowing what is just and reasonable than an appellate court can have."

Matter of Lawter, 807 F.2d 1207, 1211 (5th Cir. 1987) (citations omitted).

At the October 30, 1986 hearing, debtor's attorney stated, at various times, that there was $6,700.00 or $10,000.00 in cash available in the estate (Transcript at 18 and 20).

In its order, the bankruptcy court raised three principal grounds for reduction: (1) A possible conflict of interest in that attorney James C. Pinkerton represented both Liberty Towers Condominiums, Inc. (debtor) and James C. Hardy (debtor's principal stockholder, also in bankruptcy, who had personally guaranteed various notes of debtor). The court stated that "[a]fter review of Applicant's work records, this Court is unable to determine whether the efforts of Pinkerton and Pinkerton were commingled between the two estates." (2) Over 50% of the amount of time charged to the estate was spent on negotiating a settlement which generated only $10,000.00. (3) "the inordinate amount of time and delay shows minimal value to the remaining unsecured creditors."

Although not cited in the order itself, there is legal authority for the determinations of the bankruptcy court. See, e.g., In re AOV Industries, Inc., 797 F.2d 1004 (D.C. Cir. 1986) (requested fees may be reduced or eliminated on a number of grounds, including a finding that counsel had a conflict of interest in representing the estate); In re Classic Arms

International, Ltd., 23 B.R. 489 (Bankr. E.D.N.Y. 1982) (even assuming that the entire estate was created through counsel's ingenuity and effort, the court will not award virtually the entire estate as fees); In re Jordan, 54 B.R. 864 (Bankr. D.R.I. 1985) (benefit to the estate of counsel work is a key element in reducing fee award).

Upon its independent review of the record, this Court finds no basis from which to conclude that the bankruptcy court abused its discretion.

Accordingly, it is the Order of the Court that the bankruptcy court's order of December 5, 1986 determining attorney fees is hereby affirmed in all respects.

IT IS SO ORDERED this 10th day of June, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOAM

GIBRALTAR CASUALTY COMPANY, Plaintiff,	)	
v.	)	No. 86-C-988-BT
KEPLINGER AND ASSOCIATES, INC. Defendant,	)	
MARSH & McLENNAN, INC., and MARSH & McLENNAN GROUP ASSOCIATES, INC. Third-Party Defendants.	)	

O R D E R

This matter comes before the Court on Third-Party Defendants Marsh & McLennan, Inc. (Marsh") and Marsh & McLennan Group Associates, Inc.'s ("Marsh Group") motion to transfer pursuant to 28 U.S.C. §1404(a). For the reasons set forth below, Defendants' motion is granted.

Plaintiff, Gibraltar Casualty Company ("Gibraltar"), brings this cause of action against Keplinger and Associates, Inc., ("Keplinger") requesting the Court declare the obligations of the Plaintiff under an insurance policy are at an end, and discharging the Plaintiff from any further obligations to the Defendant. The Defendant answered with a counterclaim and a claim against the Third-Party Defendants, Marsh and Marsh Group. The Third-Party Defendants bring the instant motion to transfer. The Defendant Keplinger alleges that Gibraltar through its agent Marsh, fraudulently misled it as to the amount of its insurance policy.

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28 U.S.C. §1404(a) states:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The Tenth Circuit has held that a transfer under §1404(a) lies within the discretion of the trial court. Wm. A. Smith Construction Corp. v. International Union of Operating Engineers, 467 F.2d 862 (10th Cir. 1972). The party moving for transfer has the burden to show that the existing forum is inconvenient. Texas Eastern Transmission Corp. v. Marine Office-Appleton and Cox Corp., 579 F.2d 561 (10th Cir. 1978).

The first factor to be considered under §1404(a) is the convenience of the parties. A large measure of deference is due the Plaintiff's freedom to select his forum. However, this factor has reduced value where there is an absence of any significant contact by the forum state with the transactions or conduct underlying the cause of action. Jacobs v. Lancaster, 526 F.Supp. 767 (W.D.Okla. 1981).

In the instant case, Plaintiff is a Delaware corporation with its principal place of business in Newark, New Jersey. The Defendant is an Oklahoma corporation with its principal place of business in Houston, Texas. The Third-Party Defendant, Marsh & McLennan Group Associates, Inc., is a Texas corporation with its principal place of business in Houston, Texas. The Third-Party Defendant, Marsh & McLennan, Inc., is a Delaware corporation with its principal place of business in Houston, Texas. All Defendants assert that the more convenient forum would be the Southern

District of Texas while the Plaintiff prefers Oklahoma. Texas has all significant contacts with the transaction underlying the cause of action. All persons and documents allegedly involved in the discussions between Keplinger and Marsh are located in Houston, Texas. Plaintiff has submitted insufficient evidence indicating that a trial in the Northern District of Oklahoma is more convenient than the Southern District of Texas. Therefore, the Court concludes that the convenience of the parties favors transfer of this case to the Southern District of Texas.

The second factor under §1404(a) is the convenience of the witnesses. Third-Party Defendant Marsh Group has submitted the affidavit of Don Baughman, Vice-President of Marsh Group. Baughman states that all of the Marsh, Marsh Group and Keplinger employees involved with the transaction underlying this cause of action reside in Houston Texas, or the near vicinity. In view of the nature of this case and the fact that the relevant transaction took place in Texas, it appears that the convenience of witnesses favors the transfer to Texas.

The third standard under §1404(a) is the interest of justice. Under this standard there should be considered the relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, and all other practical problems that make the trial of the case easy, expeditious and inexpensive. Koenke v. Greyhound Lines, Inc., 289 F.Supp. 487 (W.D.Okla. 1968).

In the instant case, most if not all of the persons and documents allegedly involved are located in Houston, Texas. Violations of Texas law are alleged and Texas law will apply. Therefore, the Court concludes that the interest of justice favors the transfer of this case to the Southern District of Texas.

Based on the foregoing consideration of the circumstances in this case, and the application of the triple standard of 28 U.S.C. 1404(a), this Court finds and concludes that Third-Party Defendants Marsh & McLennan, Inc., and Marsh & McLennan Group Associates, Inc.[1] have sufficiently established that this action should be transferred to the Southern District of Texas. The motion to transfer is sustained. The Court hereby orders this case be transferred to the United States District Court for the Southern District of Texas.

IT IS SO ORDERED, this 10th day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

---

1 Original Defendant Keplinger has joined in urging the transfer to the Texas court (See Affidavit of Larry Byrd). The Court concludes that a third-party defendant has standing to move for transfer under 28 U.S.C. §1404(a). See, American Standard, Inc. v. Bendix Corp., 487 F.Supp. 254 (D.C.Mo. 1980), and Daily Express, Inc. v. Northern Neck Transfer Corp., 483 F.Supp. 916 (D.C.Pa. 1979). See also, Wright & Miller, Federal Practice and Procedure: §3844."

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARTIN HEDLEY, BRUCE G. CHRISTENSEN, WAYNE PARKER, BRUCE P. SAUER, MARIO E. CRAIG, WILLIAM L. FLOWERS, GENE A DUENOW, DALE SMITH and CURT H. CHRISTENSEN, Individuals, d/b/a MINNWISC-9 COMPANY,	)	
Plaintiffs,	)	No. 85-C-1139E
vs.	)	
SHARE AMERICA INTERNATIONAL, INC., an Oklahoma Corporation, DAVID F. HAIL, ALAN E. SARGENT and KEN R. SCRIVNER,	)	
Defendants.	)	

JUDGMENT

THIS Court has before it for its consideration the Plaintiffs' Application for Judgment against Defendants, Share America International, Inc., an Oklahoma corporation, David F. Hail and Ken R. Scrivner, filed in accordance with the settlement agreement entered into between the Plaintiffs and the aforesaid Defendants on the 12th day of January, 1987. This Court being advised that the aforesaid Defendants having failed to comply with the settlement agreement and having defaulted thereon does hereby enter judgment in favor of Plaintiffs and against the said Defendants, Share America International, Inc., an Oklahoma corporation, David F. Hail and Ken R. Scrivner, each of them, jointly and severally, in the amount of $26,250.00, plus

interest and costs including attorneys fees accrued and accruing from the date of default as provided in the settlement agreement.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in the favor of Plaintiffs and against Defendants, Share America International, Inc., David F. Hail and Ken R. Scrivner, and each of them jointly and severally in the amount of $ 26,250.00 , plus interest and costs, accrued and accruing from the date of said Defendants' default of their settlement agreement with the Plaintiffs, as provided therein together with a reasonable attorney's fee. ~~in the amount of $ _____~~.

DATED this 11th day of June, 1987.

~~JOHN LEO WAGONER, Magistrate~~ James O. Ellison
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

Sigrid M. Henshaw
HENSHAW & LEBLANG
Attorneys for Plaintiffs
7666 E. 61st, Suite 251
Tulsa, Oklahoma 74133
918/254-1414

Martin Hedley, for himself
and as attorney-in-fact for
all other Plaintiffs

Michael Yeksavich
Attorney for Defendant
3747 S. Harvard, Ste. 100
Tulsa, OK 74135

Attorney for Defendants
Share America International, Inc.
David F. Hail and Ken R.
Scrivner

SHARE AMERICA INTERNATIONAL
INC., Defendant

by: _____
President

DAVID F. HAIL, Defendant

KEN R. SCRIVNER, Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GINA MANDERS & VINNIE PAYTON HOOVER,	)	
Plaintiffs,	)	
v.	)	No. 86-C-436-B
STATE OF OKLAHOMA ex rel DEPARTMENT OF MENTAL HEALTH and EASTERN STATE HOSPITAL and LaROE HANEY,	)	No. 86-C-437-B
Defendants.	)	

J U D G M E N T

In accord with an Order filed this date sustaining the Defendant LaRoe Haney's motion for summary judgment, Judgment is hereby entered against the Plaintiffs, Gina Manders and Vinnie Payton Hoover, and in favor of the Defendant LaRoe Haney. The costs of this action are assessed against the Plaintiffs, the parties are to pay their own respective attorneys fees.

DATED this 10th day of June, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GINA MANDERS & VINNIE PAYTON HOOVER,	)	
Plaintiffs,	)	
v.	)	No. 86-C-436-B
STATE OF OKLAHOMA ex rel DEPARTMENT OF MENTAL HEALTH and EASTERN STATE HOSPITAL and LaROE HANEY,	)	No. 86-C-437-B
Defendants.	)	

J U D G M E N T

In accord with an Order filed this date sustaining the Defendant LaRoe Haney's motion for summary judgment, Judgment is hereby entered against the Plaintiffs, Gina Manders and Vinnie Payton Hoover, and in favor of the Defendant LaRoe Haney. The costs of this action are assessed against the Plaintiffs, the parties are to pay their own respective attorneys fees.

DATED this 10th day of June, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE